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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 31 1996

Allocation of Costs Associated)
with LEC Provision of Video)
Programming Services)

CC Docket No. 96-112

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COMMENTS OF SPRINT CORPORATION

The Sprint Local Telephone Companies ("Sprint") submit their comments in response to the Commission's May 10, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.

I. Introduction

In the NPRM the Commission re-examines its rules governing how incumbent local exchange carriers ("ILECs") allocate costs between regulated and nonregulated activities. Specifically, the Commission proposes detailed changes to the Part 64 Rules (47 CFR Part 64) to establish specific methods to allocate costs between telephony and video when an ILEC provides video over facilities used to provide telephony.¹

Part 64 governs the ILECs' allocation of joint and common costs between Title II regulated services (telephony) and nonregulated services (which, for these purposes, include the provision by an ILEC of video as a Title VI cable operator). The purpose of the Part 64 rules is to deter cost shifting or

1. The FCC is also interested in how to handle future broadband non-regulated services other than video.

misallocations. With the advent of ILEC provision of video as a cable operator, the Commission expressed concern that there will be more nonregulated services over the facilities than before and that the existing Part 64 rules will be inadequate to deter cost shifting. Accordingly, the Commission tentatively concludes that several changes (e.g., the adoption of specific allocation factors) to Part 64 are necessary.

Sprint respectfully submits that the proposed changes are unwarranted and are contrary to the competitive goals of the 1996 Act.² There is no evidence to suggest that the existing Part 64 rules and other regulatory safeguards are inadequate to address the ILEC provision of video programming as cable operators. Furthermore, the changes, if adopted, would unduly favor incumbent cable operators.

II. The proposed changes to Part 64 are unwarranted and are not needed to prevent misallocation.

On November 7, 1994, the Commission refused to impose additional cost allocation rules on LEC provision video dialtone notwithstanding claims that existing Part 64 rules were inadequate to prevent abuse. In the VDT Cost Allocation Order, the Commission said:

174. Several petitioners ... claim that the Commission's Part 64 rules are unproven and will not prevent cross-subsidization and other anticompetitive conduct by LECs engaged in the provision of regulated and nonregulated video dialtone services.

...

2. Telecommunications Act of 1996, Pub. L. No. 104-104, 101 Stat. 56 (1996).

179. We reject claims that we should amend Part 64 because current rules would not prevent LECs from improperly subsidizing video dialtone nonregulated services.

...

180. The Joint cost rules set forth in Part 64 were formulated to accommodate new enhanced services offerings in an increasingly competitive telecommunications environment. Part 64 . . . does not prescribe cost categories or allocation factors.... The Commission chose this approach because it believed that the mix of nonregulated activities and the organizational structure would vary widely from carrier to carrier, and that a single, prescribed manual could not adequately encompass the possible variations.

There is nothing to suggest that the Commission erred in the VDT Cost Allocation Order, nor that it should apply any different standard today.

It must be noted that Part 64 is not the Commission's only safeguard against possible ILEC abuse. The Commission requires Tier I LECs to file cost allocation manuals ("CAMs") setting forth the carrier's methodology for allocating costs between Title II regulated and nonregulated services. The CAMs are subject not only to independent audits, but also to FCC on-site audits to ensure compliance with the CAM disclosures. The Tier I LECs also file annual ARMIS reports that detail the separation of regulated and non-regulated costs in each Part 32 account.

3. In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, FCC 94-269, released November 7, 1994 ("VDT Cost Allocation Order.")

Additionally, the Commission has another powerful tool for the prevention of cross-subsidization -- Price Cap regulation of ILECs. When the Commission adopted price cap regulation it stated:

Furthermore, incentive regulation substantially curtails the economic incentive to engage in cross-subsidization. In an environment of incentive regulation, carriers are limited in their ability to enhance profits by shifting costs from more competitive to less competitive activities, since the cap on prices limits a carrier's ability to raise rates to accommodate the shifted costs. Moreover, incentive regulation eliminates the incentive to shift costs to regulated services from nonregulated services. Under incentive regulation, all a carrier accomplishes by moving costs to regulated services is to depress earnings, not to increase them. Incentive regulation, coupled with our existing regulatory controls to deter cross subsidy, should substantially discourage anticompetitive activity involving cost shifting between regulated and non-regulated lines of business.⁴

Sprint agrees with the Commission that Price Cap regulation limits the incentives to abuse the system; Sprint also believes that a properly constructed price cap regime can provide an additional reason for not imposing the proposed additional cost allocation burdens on ILECs. However, the Commission can, and should, further improve Price Cap regulation as a deterrent to cross-subsidization by adopting, as Sprint has previously suggested, a rule that once a Price Cap ILEC elects a no sharing

4. In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order and Second Further Notice of proposed Rulemaking, released April 17, 1989, at para. 104.

option it should not be allowed to later elect back into a sharing option.⁵ Such a rule would further ensure that there are even fewer incentives to depress earnings by artificially inflating costs.⁶

III. The proposed changes are contrary to the competitive goals of the 1996 Act.

As the Commission states in the NPRM, the goal of the 1996 Act is:

to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition....

The proposed changes to existing Part 64 Rules will not serve this goal, but rather will unnecessarily impede the development of competition in the cable marketplace by placing unwarranted, additional regulation on ILECs that attempt to compete in that market. Moreover, in Sprint's view the proposed rules are inconsistent with the Commission's stated intent not "to protect

5. Comments of Sprint Corporation, In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, filed December 18, 1995 at p. 11.

6. Sprint acknowledges that not all of the States have adopted incentive or price regulation, however, that is rapidly changing. Twenty-eight states have adopted price regulation plans and such plans are under consideration in three more. (Regulatory Focus, Regulatory Research Associates, Inc. Regulatory Study, May 20, 1996, pl.) As of June 2, 1996, 64% of Sprint's access lines will operate under price regulation.

7. NPRM at para. 22 quoting the Joint Explanatory Statement, Conference Report at 113.

competitors in video or other competitive markets."⁸

On January 26, 1996, in the Cable Cost Allocation Order, the Commission refused to impose new, additional cost allocation burdens upon the incumbent cable operators.⁹ Not only did the Commission refuse to adopt new rules, but it also rescinded its previous decision in the Cost Order¹⁰ that required cost allocation of non-regulated costs to specific nonregulated service categories.¹¹ Instead, the Commission decided to continue its existing cost allocation rules that "allow for [cable] operator flexibility in determining specific allocators and allocator schemes."¹²

That same flexibility should continue to be accorded to ILECs. If it is not, the ILECs that attempt to enter the cable marketplace will, under the current proposal, be burdened with unnecessary and overly specific allocation rules.

⁸ NPRM at para. 23.

⁹ In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 93-215 and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service, CS Docket No. 94-28, Second Report and Order, First Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 95-502, released January 26, 1996 ("Cable Cost Allocation Order").

¹⁰ Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-215 and CS Docket No. 94-28, FCC 94-29, 9 FCC Rcd 4527 (1994) ("Cost Order").

¹¹ Cable Cost Allocation Order at para. 119.

¹² Id.

The result, in Sprint's view, will be neither pro-competitive, nor de-regulatory.

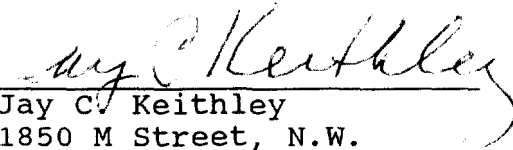
IV. Conclusion.

Sprint opposes the proposed changes to Part 64. The changes will not further the competitive, de-regulatory framework envisioned by Congress and there is nothing to suggest that the changes are necessary.

Respectfully submitted,

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May 31, 1996

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 31st day of May, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Local Telephone Companies" in the Matter of Allocation of Costs Associated with LEC Provision of Video Programming, CC Docket No. 96-112, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.


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